MOHANARAJ MUNIANDY

v.

PENGARAH JABATAN PERKHIDMATAN HAIWAN & ANOR

HIGH COURT MALAYA, PENANG
RK NATHAN J
[CIVIL SUIT NO: 22-80-1998]
24 JULY 2002

ADMINISTRATIVE LAW: *Public servants - Dismissal of public officer - Disciplinary proceedings - Whether flawed - Show cause letter adverting to dismissal or reduction in rank as possible punishment - Disciplinary Authority did not consider lower form of punishment - Whether fatal - Whether decision making process vitiated - Whether dismissal wrongful - Public Officers (Conduct and Discipline) Regulations 1993, regs. 4(2)(a), (d), (g), (i), 28(1), (12)*

The plaintiff was dismissed from the office of Assistant Veterinary Officer following disciplinary proceedings which found him guilty of two charges, namely, of being found in a shop drinking alcohol and in a state of intoxication during office hours, and of absenting himself from work without valid reason, the conduct which was in breach of reg. 4(2)(a), (d) (g) and 4(2)(g), (i) respectively of the Public Officers (Conduct and Discipline) Regulations 1993 ('the Regulations'). The plaintiff contended that his dismissal was wrongful and null and void, as the decision making process, undertaken by the Public Services Commission, the Disciplinary Authority herein ('the Disciplinary Authority'), was fatally flawed. Among others, the plaintiff argued that the Disciplinary Authority had not strictly complied with reg. 28(1) of the Regulations as the show cause letter did not show any *prima facie* case against him that would warrant his dismissal or reduction in rank, that the letter of dismissal was not personally signed by the Secretary to the Disciplinary Authority, and that, while the show cause letter adverted to both dismissal and reduction in rank as a possible form of punishment, the Disciplinary Authority, as shown by the letter of dismissal, had never considered the punishment of reduction in rank. The primary issue that arose was whether the failures of the Disciplinary Authority herein had rendered the dismissal unlawful.

Held:

[1] There was no merit in the complaint in respect of reg. 28(1) of the Regulations. The plaintiff had been supplied with sufficient particulars, facts and grounds which were all contained in the two charges. It was on the basis of these facts that the plaintiff had made his representation. He could not have done so if he was not satisfied with the facts and the grounds available to him at the time. (p 690 d)

[2] The dismissal letter merely conveyed the directive of the Disciplinary Authority. In other words, the signatory, be he the Secretary or anyone signing on his behalf merely conveyed the decision of the Disciplinary Authority made pursuant to reg. 28. Once a decision had been made, the conveyance of such a decision by way of a letter signed by anyone signing on behalf of the Secretary could not invalidate the decision making process of the Disciplinary Authority. (p 691 c-d)

[3] The letter of dismissal ought to state in categorical terms that it had considered both punishments, and that the facts therein demanded the punishment of dismissal and none other. In this case, the letter of dismissal showed that the issue of reduction in rank was never deliberated upon and only dismissal was considered by the Disciplinary Authority. This constituted a failure in the decision making process warranting the court to give judgment for the plaintiff. (pp 693 b-c & 694 a)

[Order in terms of application.]

Case(s) referred to:

Ang Seng Wan v. Suruhanjaya Polis di-Raja Malaysia & Anor [2002] 1 CLJ 493 CA ***(dist)***

Minister of Human Resources & Ors v. National Union of Hotel, Bar and Restaurant Workers, Semenanjung Malaysia & Anor [1998] 1 CLJ 215 CA ***(refd)***

Persatuan Pegawai-pegawai Bank Semenanjung Malaysia v. Minister of Labour Malaysia & Ors [1989] 1 CLJ 4; [1989] 1 CLJ (Rep) 124 SC ***(refd)***

Selvaraju Ponniah v. Suruhanjaya Perkhidmatan Awam, Malaysia & Anor [1999] 5 MLJ 678 HC ***(refd)***

Legislation referred to:

Federal Constitution, Part X

Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, reg. 26(11)

Public Officers (Conduct and Discipline) Regulations 1993, regs. 4(2)(a), (d), (g), (i), 26(2), 28(1), (12)(a), (c), 53(1), (2)

Other source(s) referred to:
Professor MP Jain, *Administrative Law of Malaysia and Singapore,* 3rd edn, p 455

For the plaintiff - MM Athimulan (Norrizan Ahmad); M/s Athimulan & Co
For the 1st defendant - Ahmad Kamar State Legal Advisor
For the 2nd defendant - Mazni Buang SFC

Reported by WA Sharif

JUDGMENT

RK Nathan J:

Facts

The plaintiff was at all material times the Penolong Pegawai Veterinar attached to the Jabatan Perkhidmatan Haiwan, Negeri Pulau Pinang (the 1st defendant). The Public Services Commission (the Disciplinary Authority) was at all material times the disciplinary authority of the plaintiff and was acting as the servant and/or agent of the 2nd defendant. By a letter dated 20 October 1994 the plaintiff was informed by the Secretary of the Public Services Commission that pursuant to reg. 28 of the Public Officers (Conduct and Discipline) Regulations 1993, the Disciplinary Authority had decided to take disciplinary action against the plaintiff with a view to his dismissal from service or reduction in rank. The plaintiff then duly made his representations by his letter dated 19 November 1994. By its letter dated 10 February 1995 the Disciplinary Authority informed the plaintiff that at its meeting No. 1802 held on 16 January 1995, where the plaintiff's case was considered in its entirety, the Public Services Commission had decided to dismiss him forthwith. The Public Services Commission by a letter dated 20 April 1995 informed the plaintiff through the State Secretary and the Head of his Department that the decision of the Public Services Commission was final and no appeal lay or arose in his case.

Case For The Plaintiff

The plaintiff prayed for:

1) a declaration that his dismissal from the Jabatan Perkhidmatan Haiwan Negeri Pulau Pinang was wrongful and that he be declared as still being a Penolong Pegawai Veterinar with a right to claim for all wages and entitlements due to him since his termination.

2) An enquiry to be held to determine his special salary and other entitlements related to his job.

3) Damages

4) Costs.

Findings Of The Court

By consent parties agreed that there were four issues for determination by the court.

1) Whether the Disciplinary Authority had strictly complied with reg. 28(1) of the Public Officers (Conduct and Discipline) Regulations 1993 in issuing the show cause letter dated 20 October 1994.

2) Whether the letter dated 10 February 1995 informing the plaintiff that he was dismissed from service is void and of no effect as it was signed by a wrong person, unauthorised by the Public Officers (Conduct and Discipline) Regulations 1993.

3) The Disciplinary Authority intended or contemplated the punishment of dismissal or reduction in rank which are distinct in nature but the decision making process shows that the Disciplinary Authority's contemplation was with regard to punishment by way of dismissal only.

4) The Disciplinary Authority did not give reasons or grounds for its decision to dismiss the plaintiff, thereby infringing the rules of natural justice and the decision making process in relation to the plaintiff's dismissal.

1st Issue

In respect of this issue Mr. Athimulan for the plaintiff submitted that the defendant had failed to comply with reg. 28(1) of the Public Officers (Conduct and Discipline) Regulations 1993. It is therefore necessary to reproduce this regulation which reads as follows:

> The appropriate Disciplinary Authority sitting to consider a case where the breach of discipline complained of has been found to be of a nature which merits a punishment of dismissal or reduction in rank shall consider all the available information and where it appears that there is a *prima facie* case against the officer for dismissal or reduction in rank, the appropriate Disciplinary Authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in rank be sent to the officer and shall call upon him to make a written representation, containing grounds upon which he relies to exculpate himself, within a period of not less than twenty-one days from the date of receipt of the charge.

The plaintiff contends that:

(a) there has been no finding of a *prima facie* case against him to warrant his dismissal or reduction in rank.

(b) No proposed grounds on which he was dismissed were supplied to him.

a It is necessary to reproduce the show cause letter dated 20 October 1994 which reads as follows:

SURUHANJAYA PERKHIDMATAN AWAM, MALAYSIA TINGKAT 16-19, WISMA KWSG, JALAN KAMPUNG ATTAP, 50520 KUALA LUMPUR.

b Ruj. Kami: SPA.SULIT.226107/3/(16)
Tarikh: 20 Oktober 1994

Dr. M.Mohanaraj a/1 K.Muniandy.

c Melalui
DAN
Salinan:

Y.B. Setiausaha Kerajaan Negeri
Pulau Pinang
Paras 25,
d Kompleks Tun Abdul Razak (KOMTAR)
10503 PULAU PINANG

(U.P: Y.B. Dato' Mohamad Noor bin Abdul Rahim)

Tuan,

e **Kenyataan Alasan-alasan Buang Kerja Atau Turun Pangkat**

Saya diarah memaklumkan bahawa dengan laporan yang diterima, maka Suruhanjaya Perkhidmatan Awam sebagai Pihak Berkuasa Tatatertib Yang Berkenaan telah membuat keputusan untuk mengambil tindakan tatatertib dengan tujuan buang kerja atau turun pangkat terhadap tuan di bawah
f Peraturan 28, Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 atas pertuduhan berikut:

Pertuduhan Pertama

'Bahawa tuan, Dr. M. Mohanaraj a/1 K.Muniandy yang bertugas sebagai Penolong Pegawai Veterinar Gred G6, Jabatan Perkhidmatan Haiwan, Negeri
g Pulau Pinang pada 7.4.1993 jam 10.10 pagi didapati sedang minum keras dan berada dalam keadaan mabuk di sebuah kedai beralamat No. 45, Jalan Irving, Pulau Pinang walhal tuan sepatutnya berada di pejabat menjalankan tugas tuan pada tarikh dan waktu yang sama. Perbuatan tuan itu yang membelakangkan tugas awam demi kepentingan persendirian berkelakuan dengan sedemikian cara hingga memburukkan nama atau mencemarkan nama perkhidmatan awam
h dan tidak bertanggungjawab adalah bertentangan dengan Peraturan 4(2)(a), 4(2)(d) dan 4(2)(g) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib), 1993.

i

Pertuduhan Kedua

Bahawa tuan, Dr. M. Mohanaraj a/l K. Muniandy, yang bertugas sebagai Penolong Pegawai Gred G6, Jabatan Perkhidmatan Haiwan, Negeri Pulau Pinang telah tidak hadir bertugas tanpa cuti atau tanpa mendapat kebenaran terlebih dahulu atau tanpa sebab yang munasabah pada 1.4.1993 hingga 7.4.1993. Dengan meninggalkan jawatan tuan itu tanpa cuti atau tanpa mendapat kebenaran terlebih dahulu atau tanpa sebab yang munasabah tuan telah melakukan kesalahan yang boleh diertikan sebagai tidak bertanggungjawab dan ingkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditafsirkan dengan munasabah sebagai ingkar perintah iaitu bertentangan dengan Peraturan 4(2)(g) dan 2(2)(i), Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.

2. Mengikut kehendak Perintah AM 28(1) Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib), 1993, tuan adalah diminta mengemukakan representasi secara bertulis yang mengandungi alasan-alasan untuk membebaskan diri tuan daripada diambil tindakan tatatertib buang kerja atau turun pangkat.

3. Representasi alasan-alasan pembelaan diri tuan hendaklah dikemukakan kepada Setiausaha Suruhanjaya Perkhidmatan Awam melalui Ketua Jabatan tuan dalam tempoh dua puluh satu (21) hari daripada tarikh penerimaan surat ini. Sekiranya tuan tidak memberi sebarang jawapan dalam tempoh masa yang dinyatakan itu, tuan adalah dianggap sebagai tidak hendak mengemukakan sebarang pembelaan diri dan perkara ini akan diputuskan atas keterangan-keterangan yang ada sekarang ini sahaja.

4. Sila tuan akui penerimaan surat ini.

'BERKHIDMATAN UNTUK NEGARA'

Saya yang menurut perintah,

t.t.
(ABDUL RAHMAN BIN HAJI AHMAD)
Setiausaha,
Suruhanjaya Perkhidmatan Awam,
Malaysia.

The plaintiff argued that the said letter contains no statement that there is a *prima facie* case against him to warrant a dismissal or reduction in rank. In a case where there is more than one tier of disciplinary authority like in this case, reg. 26(2) will come into play. It reads as follows:

> Where the Chairman of the appropriate Disciplinary Authority (in the case where there is more than one tier of Disciplinary Authority) finds that the breach of discipline complained of is of a nature which merits a punishment of dismissal or reduction in rank, the Chairman of the appropriate Disciplinary Authority shall refer the case to a Disciplinary Authority that has the power to impose a punishment of dismissal or reduction in rank.

In this case having considered that the breach of discipline complained of merits either dismissal or reduction in rank the Chairman of the Lembaga Tatatertib Perkhidmatan Awam Kumpulan Sokongan, Jabatan Perkhidmatan Haiwan Negeri, Pulau Pinang then referred this matter pursuant to reg. 28 to the Public Services Commission. It was the case of the plaintiff that had he been alerted to the *prima facie* findings made out against him he would have been prepared in every possible way, to challenge such findings.

Mr. Athimulan then goes on to argue that no statement of facts was given to his client except for the two charges contained in the notice to show cause dated 20 October 1994. It is his case that the findings of the Chairman of the Jabatan Perkhidmatan Haiwan Negeri, Pulau Pinang which would have given the Public Services Commission a basis for determining that a *prima facie* case had been made out, in addition to considering all the available information, ought to have been given to his client. His plea is that his client neither had the facts nor the grounds on which the Public Services Commission had established a *prima facie* case against his client.

In response Cik Mazni Buang for the 2nd defendant argued that the show cause letter dated 20 October 1994 contained all the facts and grounds necessary to arrive at a conclusion that a *prima facie* case had been established against the plaintiff. She referred the court to the facts as stated in the two charges. In respect of the first charge the facts were that on 7 April 1993 at about 10.10am he was found drinking alcohol and being in a state of intoxication at shop No. 45 Jalan Irving, Pulau Pinang whereas at that material time he ought to have been at his office attending to his duties. The rest of the charge represented the grounds.

In respect of the 2nd charge the facts were that between 1 April 1993 to 7 April 1993 the plaintiff had absented himself from work without leave or without permission or without reasonable cause or excuse. The rest of the charge represented the grounds.

I have considered the submissions of both parties on this issue. There is no requirement in the Public Officers (Conduct and Discipline) Regulations 1993 for the Chairman of the Appropriate Disciplinary Authority and in this case the Chairman of the Lembaga Tatatertib Perkhidmatan Awam, Kumpulan

Sokongan, Jabatan Perkhidmatan Haiwan, Negeri Pulau Pinang, to state his grounds or findings whilst referring the matter to the Public Services Commission. So long as the Chairman finds that the breach of discipline complained of is of a nature which merits a punishment of dismissal or reduction in rank, he will refer the case to the Public Services Commission.

In *Selvaraju a/l Ponniah v. Suruhanjaya Perkhidmatan Awam, Malaysia & Anor* [1999] 5 MLJ 678 I held that in so far as the giving of reasons is concerned, so long as the General Orders do not require the departments to provide reasons, there is no requirement for them to do so. In arriving at this conclusion I was guided by the decision of the Court of Appeal in *Minister of Human Resources & Ors v. National Union of Hotel, Bar and Restaurant Workers, Semenanjung Malaysia & Anor.* [1998] 1 CLJ 215 CA. In any case, I am satisfied that both the charges contain sufficient facts. The grounds on which he was charged in respect of the 1st charge were that by being found in a shop drinking alcohol and in a state of intoxication whilst he ought to have been at his place of work and attending to his work, he had put his personal interest before his duty and in so doing had spoilt the name and given a bad image of the public services and by so doing he had breached reg. 4(2)(a), (d) and (g) of the Public Officers (Conduct and Discipline) Regulations 1993. The said rules are reproduced for ease of reference.

4.(2) An officer shall not:

(a) subordinate his public duty to his private interests;

(b) -

(c) -

(d) conduct himself in such manner as to bring the public service into disrepute or to bring discredit thereto;

(e) -

(f) -

(g) be irresponsible

In respect of the 2nd charge, the grounds on which he was charged were that by absenting himself from work without leave or permission or without reasonable cause or excuse between 1 April 1993 to 7 April 1993 he had acted irresponsibly and that such conduct could be reasonably assessed as not wanting to follow orders and that thereby he had breached reg. 4(2)(g) and (i) of the said regulations.

Regulation 4(2)(g) and (i) read as follows:

(i) An officer shall not:

(a) -

(b) -

(c) -

(d) -

(e) -

(f) -

(g) be irresponsible

(h) -

(i) be insubordinate or conduct himself in any manner which can reasonably be construed as being insubordinate;

To my mind the complaint of the plaintiff on this score is unacceptable. The plaintiff had been supplied with sufficient particulars, facts and grounds which were all contained in the two charges. In fact based on these facts the plaintiff must have made a written representation. He could not have done so if he was not satisfied with the facts and grounds available to him at that time.

2nd Issue

The 2nd issue raised by the plaintiff was that the letter dated 10 February 1995 dismissing the plaintiff was not signed by the secretary to the Public Services Commission but instead it was signed on his behalf by one Mohd Nor bin Haji Mohd Yassin. Counsel relied on reg. 53(1) and (2) of the Public Officer (Conduct & Discipline) Regulations 1993 which read as follows:

(1) Letters and other correspondence between the appropriate Disciplinary Authority and the officer who is subject to disciplinary action shall be signed by the Chairman of the appropriate Disciplinary Authority or by any member of the Disciplinary Authority on behalf of the Chairman.

(2) Notwithstanding the provisions of sub-regulation (1), where the Disciplinary Authority is a Service Commission established under Part X of the Federal Constitution, letters and other correspondence required to be signed may be signed by the Secretary of the Service Commission concerned.

Since there was no evidence which led to show if the said Mohd Nor bin Haji Mohd Yassin was a member of the Disciplinary Authority, the plaintiff sought to invoke reg. 53(1). The plaintiff also argued that by virtue of reg. 53(2) only the secretary could sign the letter of dismissal.

In response, Cik Mazni argued that since the Public Services Commission is a Disciplinary Authority established under Part X of the Federal Constitution, reg. 53(2) applied in this case.

As to whether the signatory ought to have been the secretary himself, counsel argued that the regulation was merely directional and not mandatory. In the circumstances it was her case anyone could sign on behalf of the secretary

I accept the submission that the dismissal letter merely conveyed the directive of the Public Services Commission. In other words the signatory be he the secretary or anyone signing on his behalf merely conveyed the decision of the Public Services Commission made pursuant to reg. 28. I therefore hold that once a decision had been made, the conveyance of such a decision by way of letter signed by anyone signing on behalf of the secretary could not invalidate th decision making process of the Public Servic Commission.

3rd Issue

On this score, counsel for the plaintiff pointed out that whilst the show cause letter dated 20 October 1994 considered both dismissal and reduction in rank, the letter of dismissal showed that only the issue of dismissal had been considered. It is therefore necessary to reproduce the letter of dismissal which reads as follows:

SURUHANJAYA PERKHIDMATAN AWAM, MALAYSIA TINGKAT 16-19,
WISMA KWSG, JALAN KAMPUNG ATTAP, 50520 KUALA LUMPUR

Ruj.Kami: SPA.SULIT.226L07/3/(25)
Tarikh: 10hb. Februari 1995

Dr. M.Mohanaraj a/l K.Muniandy

Melalui
dan
Salinan

Y.B. Setiausaha Kerajaan Negeri
Pulau Pinang,
Paras 25,
Kompleks Tun Abdul Razak (KOMTAR)
10503 PULAU PINANG

Tuan,

Keputusan Tatatertib Suruhanjaya Perkhidmatan Awam

Saya diarah merujuk kepada surat Suruhanjaya ini SPA.SULIT.226107/3 bertarikh 20.10.1994 meminta tuan mengemukakan representasi secara bertulis yang mengandungi alasan-alasan yang tuan hendak gunakan untuk membebaskan diri tuan daripada tindakan tatatertib dengan tujuan buang kerja di bawah Peraturan 28, Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993. Tuan telah mengemukakan representasi tersebut melalui surat tuan bertarikh 19.11.1994.

2. Suruhanjaya Perkhidmatan Awam dalam mesyuaratnya yang ke-1802 pada 16.1.1995 setelah menimbangkan dengan teliti kes tuan itu pada keseluruhannya telah memutuskan bahawa tuan dikenakan hukuman buang kerja berkuatkuasa dengan serta-merta iaitu mulai 17.1.1995.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

t.t.
(MOHD. NOR B. HAJI MOHD. YASSIN)
b.p. Setiausaha,
Suruhanjaya Perkhidmatan Awam,
Malaysia.

The plaintiff argued that since the lesser of the two punishments was not even considered by the Pubic Services Commission this clearly constituted a flaw in the decision making process. Regulation 28(12) reads as follows:

If, after considering the representation under sub-regulation (1) and, where a Committee of Investigation is appointed, the report of such Committee, the appropriate Disciplinary Authority finds:

(a) that the officer is guilty of misconduct and should be dismissed or reduced in rank, the Disciplinary Authority shall forthwith impose the appropriate punishment;

(b) that the officer is guilty of misconduct but such misconduct does not merit dismissal or reduction in rank but merits a lesser punishment, the Disciplinary Authority shall impose on the officer such lesser punishment as it deems fit and proper; or

(c) that the officer is not guilty of misconduct, the Disciplinary Authority shall acquit him.

Relying on sub-reg. (12) the plaintif argued that the deliberation of the Commission must be made and shown to have been made after having considered both the issues of dismissal and reduction in rank.

In response Cik Mazni argued that by para. 2 of the said letter of termination it was clear that the Commission had considered the case in its entirety and had arrived at the decision to dismiss him.

Having considered the submission of both parties on this issue I find that the letter of dismissal in no uncertain terms had only one aim that is to consider his dismissal (dengan tujuan buang kerja). With such a fixed view it cannot be denied that the issue of reduction in rank was never considered. Whilst the show cause letter had indicated that there were two possible punishments the plaintiff could face, the decision of the Commission clearly was centred only on dismissal.

The submission of the defence that the entire case had been taken into consideration and that this included the consideration of reduction in rank, cannot be accepted. The entire case had no doubt been considered but it would seem from a reading of the letter of dismissal, that the entire case had been considered only in respect of dismissal. Since there is no requirement for the Commission to give any reasons, all the more it is incumbent upon the Commission to have expressed in no uncertain terms and in clear precise language that it had considered both punishments and that the facts demanded the punishment of dismissal and none other.

In *Persatuan Pegawai-Pegawai Bank Semenanjung Malaysia v. Minister of Labour Malaysia & Ors.* [1989] 1 CLJ 4; [1989] 1 CLJ (Rep) 124 the then Supreme Court held that where all matters required by the law to be taken into consideration had in fact not been taken into consideration by the Minister, the decision of the Minister on appeal in confirming the registration of an association as a trade union, was held to be a nullity.

Professor M.P. Jain in his *Administrative Law of Malaysia and Singapore*, 3rd edn, says at p. 455 as follows:

> Discretion should not be guided by irrelevant considerations, ie, the considerations lying outside the scope of the statute concerned. Conversely, a decision-maker while exercising his discretionary power ought to take into account relevant considerations. If he does not take into account, or ignores, considerations which are relevant to the purpose of the statute in question, then again its act or decision will be invalid.

Whilst the plaintiff had made his representation the Commission by its letter of dismissal had failed to state if it had also considered the lesser alternative punishment. Herein lies the failure in the decision making process. On this ground the plaintiff must succeed.

4th Issue

On this issue, it is the plaintiff's submission that whilst under reg. 28(12)(a) there is a requirement of the Commission to first find the officer guilty and then to impose the appropriate sentence and under s. 28(12)(c), even an order of acquittal, it is therefore necessary for the Commission to state its reasons.

Counsel then referred to the old reg. 26(11) of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 which reads as follows:

> If, upon considering the report of the Committee the Appropriate Authority is of the opinion:
>
> (a) that the officer should be dismissed or reduced in rank, it shall forthwith direct accordingly;
>
> (b) that the officer does not deserve to be dismissed or reduced in rank, but deserves some lesser punishment as it may deem fit; or
>
> (c) that the proceedings disclose sufficient grounds for requiring him to retire in the public interest, it shall recommend to the Government accordingly. The question of pension will be dealt with under the Pensions Act.

The old regulations are now no longer in force.

Referring to a recent decision of the Court of Appeal in *Ang Seng Wan v. Suruhanjaya Polis di-Raja Malaysia & Anor* [2002] 1 CLJ 493 the plaintiff pointed out that there was no specific finding of guilt against him as was required to be made, pursuant to the decision in *Ang*'s case *(supra)*.

Relating this case to the new regulations, counsel submitted that whilst in the old regulation there was no requirement to make a finding of guilt, all the more was it necessary to do so under the new regulation.

I am of the view that the decision in *Ang*'s case *(supra)* was not centered on the non-finding of guilt against Ang, but that there was in the opinion of the Court of Appeal "no evidence whatsoever to rebut or contradict the exculpatory statement of Ang". The Court of Appeal went on to hold that it was open to the Commission to have held an oral hearing or enquiry which could have contradicted the exculpatory statement of Ang. In the circumstances Ang's exculpatory statement remained unchallenged. But that is not the case here.

Since the Court of Appeal in *Ang*'s case *(supra)* made no decision that the non-finding of guilt had vitiated the dismissal, I am not prepared to extend the law to that extent. Merely not recording a finding of guilt does not mean that the entire decision making process is flawed.

I therefore granted an order in terms of prayers (i), (ii), (iii) and (iv).